

Office of the Secretary of Defense

§ 310.53

are about Federal personnel must be greater than of any other category).

(ii) The purpose of the match must not be for purposes of taking any adverse financial, personnel, disciplinary, or other unfavorable action against an individual.

(6) Performed using only records from systems of records maintained by an agency.

(i) The purpose of the match must not be for purposes of taking any adverse financial, personnel, disciplinary, or other unfavorable action against an individual.

(ii) A match of DoD personnel using records in a system of records for purposes of identifying fraud, waste, and abuse is not covered.

(7) Performed to produce background checks for security clearances of Federal or contractor personnel or performed for foreign counter-intelligence purposes.

§ 310.52 Computer matching publication and review requirements.

(a) DoD Components shall identify the systems of records that will be used in the match to ensure the publication requirements of subpart G have been satisfied. If the match will require disclosure of records outside the Department of Defense, Components shall ensure a routine use has been established, and that the publication and review requirements have been met, before any disclosures are made (see subpart G of this part).

(b) If a computer matching program is contemplated, the DoD Component shall contact the DPO and provide information regarding the contemplated match. The DoD DPO shall ensure that any proposed computer matching program satisfies the requirements of the Privacy Act (5 U.S.C. 552a) and OMB Matching Guidelines (54 FR 25818 (June 19, 1989)).

(c) A computer matching agreement (CMA) shall be prepared by the Component, consistent with the requirements of § 310.53 of this subpart and submitted to the DPO. If the CMA satisfies the requirements of the Privacy Act (5 U.S.C. 552a) and OMB Matching Guidelines (54 FR 25818 (June 19, 1989)), as well as this subpart, it shall be forwarded to the

Defense Data Integrity Board (DIB) for approval or disapproval.

(1) If the CMA is approved by the DIB, the DPO shall prepare and forward a report to both Houses of Congress and to OMB as required by, and consistent with, OMB Circular A-130, "Management of Federal Information Resources," February 8, 1996, as amended. Congress and OMB shall have 40 days to review and comment on the proposed match. Any comments received must be resolved before matching can take place.

(2) If the CMA is approved by the DIB, the DPO shall prepare and forward a match notice as required by OMB Circular A-130, "Management of Federal Information Resources," February 8, 1996, as amended, for publication in the FEDERAL REGISTER. The public shall be given 30 days to comment on the proposed match. Any comments received must be resolved before matching can take place.

§ 310.53 Computer matching agreements (CMAs).

(a) If a match is to be conducted internally within DoD, a memorandum of understanding (MOU) shall be prepared. It shall contain the same elements as a CMA, except as otherwise indicated in paragraph (b)(4)(ii) of this section.

(b) A CMA shall contain the following elements:

(1) *Purpose.* Why the match is being proposed and what will be achieved by conducting the match.

(2) *Legal authority.* What is the Federal or state statutory or regulatory basis for conducting the match. The Privacy Act does not constitute independent authority for matching. Other legal authority shall be identified.

(3) *Justification and expected results.* Explain why computer matching as opposed to some other administrative means is being proposed and what the expected results will be, including a specific estimate of any savings (see paragraph (b)(13) of this section).

(4) *Records description.* Identify:

(i) The system of records or non-Federal records. For DoD systems of records, provide the FEDERAL REGISTER citation for the system notice;